

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
Case No.: 7:23-CV-897**

IN RE:

CAMP LEJEUNE WATER LITIGATION

This Document Relates to:

ALL CASES

**PLAINTIFFS' MOTION TO COMPEL PRODUCTION**

Pursuant to Rule 37(a)(3)(B) of the Federal Rules of Civil Procedure, Local Civil Rule 7.1(c)(1), and United States Magistrate Judge Robert B. Jones Jr.'s Amended Order entered on November 21, 2023, Plaintiffs hereby move the Court for an order compelling Defendant United States of America ("Defendant") to produce the current draft of the Agency for Toxic Substances and Disease Registry ("ATSDR") Cancer Incidence Study ("CIS") in response to Plaintiffs' Request Number 1 to Plaintiffs' Second Request for Production of Documents. In support of this motion, Plaintiffs state as follows:

1. On October 29, 2023, Plaintiffs served Defendant with a Second Request for Production of Documents ("RFP #2"). Request Number 1 to Plaintiffs' RFP #2 sought, *inter alia*, "documents regarding any "future study or report (including any supporting data), whether completed or uncompleted, published or unpublished, approved for dissemination or not, that examines, in whole or in part, the impact on human health of PCE, TCE, vinyl chloride, benzene, dichloroethylene, and/or any other volatile organic compounds present in the water at Camp Lejeune between August 1, 1953 and December 13, 1987, performed by: (1) a United States

governmental entity including but not limited to ATSDR . . . .” Plaintiffs’ Second Request for Production of Documents is attached hereto as **Exhibit A**.

2. In its Response to Request Number 1, served on November 29, 2023, Defendant acknowledged the existence and completion of the ATSDR Cancer Incidence Study but objected to its production, stating that “the deliberative process privilege applies to, *inter alia*, the production of any drafts of the ATSDR Cancer Incidence Study and related materials as the study undergoes the agency’s standard peer review process.” Defendant United States of America’s Responses to Plaintiffs’ Second Request for Production of Documents is attached hereto as **Exhibit B**.

3. In the same Response, Defendant stated that the “United States will make a formal privilege assertion related to the deliberative process privilege in conjunction with any other privilege assertions made pursuant to the stipulated ESI protocol,” and “[d]ocuments being withheld for privilege will be identified on a privilege log.” *Id.* The United States did not and has not identified a date or timeframe by which it will produce a privilege log or “formally” assert the deliberative process privilege.

4. Plaintiffs bring this motion on the grounds that (1) Defendant is improperly asserting the deliberative process privilege over factual information to which the deliberative process does not apply, and (2) the public interest favors disclosure of the ATSDR Cancer Incidence Study and good cause exists for the production of these documents.

5. As required by Local Civil Rule 7.1, this motion is accompanied by a supporting Memorandum of Law.

6. Undersigned counsel certifies that there has been a good faith effort to resolve this discovery dispute prior to the filing of the present motion.

WHEREFORE, Plaintiffs respectfully pray the Court orders as follows:

1. That the deliberative process privilege is inapplicable to the ATSDR Cancer Incidence Study and its underlying data; and/or
2. The public interest in the ATSDR Cancer Incident Study and its underlying data requires disclosure;
3. That Defendant promptly produce the ATSDR Cancer Incidence Study and its underlying data;
4. For such other and further relief as the Court deems just and proper.

Dated: December 4, 2023

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